IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2887 OF 1998

Mr.Ram Purushottam Awasthi)
Indian, Occ. Business having)
office at Shiv Advertising, Patel)
Industrial Estate, Navpada Road)
Oshiwara Bakery Jogeshwari (West))
Mumbai-400 102, And residing at)
Kailash Apartment, B-303, Juhu)
Gaonthan Road, Juhu, Mumbai-400049)
Presently at Jodhpur for business)
purpose.)..Applicant
(Org.Accused)

Versus

1. Mr.Hemant Fakir Mistry)
residing at Shankar Apartments)
Opp. Nadiadwala Colony, 4th)
Floor, S.V.Road, Malad (West))
Mumbai-400 064.)

2 The State of Maharashtra)..Respondents

Mr.A.P.Mundargi i/by M.Unnikrishnan &
N.K.Dayanandan for the applicant.

None for respondent no.1.

Mr.P.S.Hingorani APP for the State.

Coram : R.S.Mohite,J

Date : 13.7.2006.

Judgment :-

1. Heard both sides. This is an application seeking to quash summons issued against the applicant by the Metropolitan Magistrate, 10th Court, Andheri in Case No.550/S/97 for offences under Sections 406, 506-(ii) & 323 of IPC. On perusing the complaint it is clear that it is the

case of the Complainant that he is a professional computer operator. He was entrusted professional work by the accused and was supposed to do the work of preparing identity cards of voters which was the order received by the the accused from M/s.Vakrangi Ltd. From his professional services he was to be paid Rs.3000 per month as remuneration and 20% incentive-commission of total dealing. The complainant stated that he was continued in the work by the accused for atleast 18 months and amount of Rs.54,000/- was due to him. The accused has paid the Complainant Rs.18,000/- but did not pay the balance amount. When the Complainant demanded the balance amount, the accused gave him 2400 cassates to sell in the market with the understanding that the sale proceed was to be adjusted towards his dues. The Complainant disposed off 400 cassates and returned back the remaining 2000 cassates to the accused.

2. As far as offence under Section 406 of IPC is concerned, in my view, there is no entrustment within the meaning of Section 405 of IPC. The 2 explanations to Section 405 of IPC incorporate deeming fiction as to when certain amount is said to have been entrusted to an employer when an amount of the contribution is deducted by him. This relates only in the cases of deduction made from provident fund or Family Pension Fund and Employees State

Insurance Fund. There is no such deeming fiction in the case of amount payable under contract. In the present case the Complainant admits in his complaint that accused gave him 2400 cassates for sale which was accepted by him. The complainant said that he infact managed to sell 400 cassates and returned back 2000 cassates to the accused. What are the exact dues payable to the Complainant is thus rendered to be a matter of account. In my view, no offence under Section 406 of IPC can be said to be made.

3. In so far as offence under Sections 323 and 506 part-ii are concerned, there are certain allegations which prima facie may amount to an offence under Section 323 & 506-ii of IPC. Needless to say that these statements will have to be proved at the stage of trial.

4. In the result, application is partly allowed. The process issued under Section 406 of IPC is quashed and set aside. Process issued under Sections 323 & 506 part-ii of IPC is however confirmed. Rule made absolute in the aforesaid terms. Application stands disposed of accordingly.

(R.S.Mohite,J)